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Authority Of Bawaslu In Election Law Enforcement And Justice (Analysis Of Handling Of Election Administrative Violations Through Adjudication)

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Abstract

One indicator of a democratic rule of law is general elections to ensure the sovereignty of the people, democratic elections are elections that run in accordance with the electoral legal framework. The implementation of elections has its own legal character, different from other laws, therefore, the legal framework for elections must be able to guarantee the rights of the people in elections, so that law enforcement and election justice can run upright and straight, leading to elections with integrity. In the electoral legal framework, Bawaslu is given more authority by the election law, in addition to being tasked with prevention and supervision, it is also given adjudication authority in resolving the process of handling election administrative violations. The research method that the author uses is normative juridical, primary, secondary and tertiary legal data sources, data collected through library studies and field studies, and analyzed by qualitative juridical. The results of the study show that the authority of Bawaslu in enforcing election law and justice is to take legal action in the election process if it is not in accordance with the election laws and regulations. Such legal actions can be constructive, namely law enforcement that allows to change and/or cancel decisions, and can be punitive, namely those that allow sanctions to be imposed on perpetrators of violations, the decisions issued by Bawaslu are binding on the parties. The Bawaslu adjudication mechanism is guided by Perbawaslu concerning the Settlement of Election Administrative Violations. KPU is obliged to follow up on Bawaslu's decision. If it is not followed up, the KPU can be reported to the DKPP, for violating the election organizer's code of ethics.

Keywords: Election, Law Enforcement, Adjudication

A. Introduction

The Indonesian Constitution (UUD 1945) has provided the basics for administering the state and structuring the life of a democratic nation. It is emphasized in Article 1 paragraph (2) "Sovereignty is in the hands of the people and is carried out according to the Constitution". In carrying out the sovereignty of the people, Indonesia asserts as a state of law. The concept of a state that upholds the principle of people's sovereignty (democracy) is to put forward the legal framework in every state implementation¹. According to Jimly Asshiddiqie, the basic principles of a democratic rule of law are manifested in the form of recognition and guarantees of human rights (HAM) in a democracy, setting up election mechanisms as a manifestation of people's

¹ Alan Wall, Andrew Ellis, dkk, Desain Penyelenggara Pemilu Buku Pedoman Internasional IDEA, Terjemahan yang disunting oleh Perludem, Jakarta, Internasional IDEA, Stockholm, 2016

sovereignty, and promoting the principle of checks and balances in structuring state institutions^{2,3}.

Robert A. Dahl stated that democracy in the modern era is a form of representative democracy that requires political institutions as a guarantee for the implementation of democracy⁴. One of these institutions is free, fair and periodic elections. Hans Kelsen stated that the form of democracy is elections, where the state organs are formed to form and implement legal norms. General elections, which are commonly called elections, are a means of distributing people's sovereignty in the form of people's political participation to exercise their voting rights. Joseph Schumpeter, said that the election is an arena, which functions as a forum for the competition of political actors to gain power for the people's suffrage⁵. Elections as a means of popular sovereignty must be ensured to run democratically. An undemocratic election process will certainly have an impact on the weakness of legitimacy or recognition of election results, even the elected government tends to have the potential to take actions that are not democratic system or directing its government to a system of state power (*machsstaat*)⁶. To prevent this, it is important to enforce the election law based on the principle of equality before the law and due process the law or every action in the election must be based on written laws and regulations and must exist and apply first. so that every action or deed must be in accordance with the applicable rules and procedures.

One of the instruments of democracy is elections, because elections are held to elect representatives of the people who will occupy executive and legislative positions by directly involving the people as the holders of sovereignty over the state, for that the implementation of elections must be carried out in accordance with the principles of elections, namely, direct, general, free, confidential, honest, and fair⁷. In order to achieve this, a firm and fair legal framework is needed, an election organizer that is independent, professional, with integrity, transparency, accountability for the implementation process and active community participation. In terms of holding elections, election administrators who are full of legal rules must fulfill the values of election justice. The value of justice is very broad in scope, not only in the framework of law enforcement. In the implementation of elections, justice is a key word that must be considered, starting from the preparation of regulations, the implementation of electoral regulations by the organizers and stakeholders, and the community as sovereign owners.

Electoral justice must be used as an important factor that can influence the behavior of stakeholders in the process of holding elections, with a solid legal framework based on the norms and values held by a society, then carried out with due

² Bambang Sunggono, Metode Penelitian Hukum, PT. Raja Grafindo Persada, Depok, 2006

³ Achmad, W. RW (2021). Conflict Resolution of Remote Indigenous Communities (Overview of The Sociology Communication). LEGAL BRIEF, 10(2), 280-286

⁴ Bawaslu Provinsi Jawa Barat, Efektifitas Penegakan Hukum Pemilu, Potret Penindakan Pelanggaran Pemilu 2019 di Provinsi Jawa Barat, Bawaslu Prov. Jabar, Bandung, 2020

⁵ Faisal Riza, Mohammad dan Ruhermansyah, Pelanggaran Administrasi Bawaslu Pasca Rekapitulasi dan Putusan MK: Konsekuensi dan Problematikanya, Serial Evaluasi Penyelenggaraan Pemilu Serentak 2019, Perihal Penegakan Hukum Pemilu, Bawaslu, Jakarta, 2019

⁶ Gunawan Suswantoro, Mengawal Penegak Demokrasi; Dibalik Tata Kelola Bawaslu dan DKPP, Penerbit Erlangga, Jakarta, 2016

⁷ Heru Widodo, Hukum Acara Sengketa Pemilukada Dinamika di MK, Konstitusi Press, Jakarta, 2018

regard to the principles of justice, then the elections that are being held can run effectively. , independent (standing alone or free), and impartial (not taking sides with one group). Based on this, election law enforcement has an important role in realizing elections with integrity and justice.

The legal framework of the electoral system in Indonesia, always changes from time to time in every election, the political dynamics of election law, seems to be a burden for political parties as election participants based on the evaluation of previous elections. Therefore, changes to the election law are always included in the priority national legislation program (prolegnas) in the legislative body, every time an election is held. This proves that electoral law politics is a legal policy regarding laws that will be enforced or not enforced to achieve state goals. The implementation of the 2019 election uses the legal basis of Law Number 7 of 2017 concerning General Elections, if we compare it with the legal framework of previous elections, it is clear that there is something different in the 2019 election, where Law Number 7 of 2017 which is the basis, has includes the substance of three laws, namely the Law on the Election of the President and Vice President (Law Number 42 of 2008), the Law on Election Organizers (Law Number 15 of 2011), and the Law on General Elections. Members of the DPR, DPD and DPRD (Law Number 8 of 2012).

Election organizers are mentioned in Law Number 7 of 2017: Election organizers are institutions that organize elections consisting of the General Election Commission (KPU), the General Elections Supervisory Body (Bawaslu), and the General Election Organizers Honorary Council (DKPP) as a unitary function of organizing elections to elect members of the People's Representative Council (DPR). , members of the Regional Representatives Council (DPD), the President and Vice President, and to elect members of the Regional People's Representative Council (DPRD) directly by the people. Provisions on election management have undergone significant changes. The most visible change is a shift in the status, duties and authorities of the KPU, Bawaslu and DKPP. In short, the duties and authority of the KPU in resolving election administrative violations have been reduced, the duties and authority of Bawaslu have been strengthened. As an election management body, Bawaslu in carrying out its duties is regulated in Law Number 7 of 2017, Bawaslu is tasked with setting standards for the supervision of elections for election supervisors at every level, preventing and taking action against election violations and electoral process disputes, supervising preparations for the implementation of elections⁸. Overseeing the implementation of the stages of organizing elections, preventing the practice of money politics, and supervising the neutrality of ASN, TNI and POLRI.

In the case of election administrative violations in the previous election, Bawaslu only examined and then provided recommendations to the KPU, and the KPU made the decisions and sanctions, in Law Number 7 of 2017 Bawaslu decides. Furthermore, in the Law it is stated that Bawaslu has the authority to receive and follow up on reports relating to alleged violations of the implementation of laws and regulations governing elections, examine, review, and decide on election administration violations, examine, review, and decide. money politics violations, receive, examine, mediate or adjudicate, and decide on the dispute resolution of the election process.

⁸ M. Afifuddin, *Membumikan Pengawasan Pemilu*, PT. Alex Media Komputindo, Jakarta, 2020

In general, election administrative violations based on article 460 of Law Number 7 of 2017 states "election administrative violations include violations of procedures, procedures, or mechanisms related to the administration of the implementation of elections in every stage of election administration". In addition, the regulation on the authority of Bawaslu in taking action against alleged election administrative violations is regulated in Article 407 and Article 461 of Law Number 7 of 2017. Furthermore, related to the authority of Bawaslu in handling alleged election administrative violations, it is regulated in Bawaslu Regulation Number 8 of 2018 concerning Settlement of General Election Administrative Violations. Based on data from the RI Bawaslu, the total number of administrative violations in the 2019 election was 1,126 cases consisting of findings and reports. Based on these data, there were 927 cases registered, 199 cases not registered, 68 cases not being accepted in the preliminary trial, and 859 cases being accepted in the preliminary trial.

In addition, if you look at the 2019 election administrative violation data at the Bawaslu of West Java Province, there are 103 cases of alleged election administrative violations with the completion of the handling of violations in an open trial, 50 cases were resolved by an open trial mechanism, and 53 cases were resolved by a quick procedure examination mechanism. Based on the data above, that there are many legal issues related to election administrative violations, in practice, Bawaslu is given the authority to resolve election administrative violations through adjudication, only to be implemented in the 2019 election. On the other hand, election law enforcement which is the authority of Bawaslu, must really be implemented. On the other hand, the new authority must be able to be carried out professionally by Bawaslu. In addition, in the enforcement of election law, it must also be balanced with electoral justice which is the benchmark for elections as a means of people's sovereignty^{9, 10, 11}.

B. Research Method

1. Type of Research

The type of research that the author uses in this research is normative juridical research, research on positive legal rules and legal principles, which is carried out by evaluating relevant legal rules relating to the subject matter discussed.

2. Data Source

This research is directed as a normative juridical research, namely research on secondary data, which consists of.

a) Primary Legal Material

That includes laws and regulations related to the issues studied, such as: the 1945 Constitution, MPR Decrees and laws and regulations relating to the adjudication authority of Bawaslu in the election process.

b) Secondary Legal Material

⁹ Sidiq, R. S. S., Jalil, A., & Achmad, R. W. W. (2021). Virtual World Solidarity: How Social Solidarity is Built on the Crowdfunding Platform Kitabisa. com. Webology, 18(1), 192-202.

¹⁰ Sidiq, R. S. S., & Maulida, H. (2021). Exploring Health Disparities in Indigenous Akit Tribal Community in Riau Province. MIMBAR: Jurnal Sosial dan Pembangunan, 37(1).

¹¹ PrawiraW, R., Maulida, H., & Achmad, W. (2021). Narrating the Implementation of Social Welfare Community Program. Review of International Geographical Education Online, 11(5), 228-235.

In this case, the author will collect data from the results of scientific work of scholars and research results related to research.

c) Tertiary Law Material

Materials are taken from magazines, newspapers to support information in research.

3. Data Collection Techniques

The data collection technique used in this study is library research, namely through tracing legislation, documents and scientific books that are in accordance with the object to be studied, and field research. conducted in order to obtain primary data related to the research.

4. Data Analysis

The data analysis technique used is a qualitative juridical analysis technique, where after all the data is collected, processing, analyzing and constructing the data as a whole is carried out. Furthermore, after the data is processed, data interpretation is carried out to draw conclusions from the facts encountered in the field. The descriptions and conclusions in interpreting the research data will be related to the theories, opinions and formal rules that have been stated in the previous section.

C. Discussion

The legal framework for elections in Indonesia recognizes two election supervisory actors, firstly election supervisors who are given the position and task of supervision by the state, secondly, election supervisors who come from the community who are not given special positions and assignments by the state or are called participatory supervisors. This is the basis for the slogan (tagline) of Bawaslu "together with the people, watch the elections, together with Bawaslu, uphold election justice". The slogan means that elections are the property of all Indonesian people, in order to create quality, democratic and integrity elections, the supervision carried out by the people is an important part of the electoral process. As election organizers who are given special authority to take action against election violations, Bawaslu is used as the center of the electoral law enforcement system, because matters relating to election violations, whether administrative, criminal, code of ethics, or other legal violations related to elections, cannot be ignored. processed by other law enforcement agencies, before going through the process of handling violations at Bawaslu. This is because election law has a specificity in its legislation (lex specialist).

1. The Authority of Bawaslu, Law Enforcement and Election Justice

a) Authority of Bawaslu

Elections that have legitimacy, both process and results are determined by the performance of supervision, measured by the level of success, through strategy supervision that can prevent potential violations, and handling violations, as well as supervision in accordance with statutory regulations. The supervision carried out by Bawaslu not only ensures that it is procedurally correct, but also ensures quality and integrity elections with guaranteed fulfillment of the people's constitutional rights in channeling their votes.

Based on Law Number 7 of 2017 concerning General Elections, Bawaslu has the following duties, authorities, and obligations:

1) Tasks:

- a) Develop standard procedures for supervising the implementation of elections for election supervisors at every level;
- b) To prevent and take action against:
 - 1. Election violations; and
 - 2. Disputes over the electoral process.
- c) Supervise the preparation of the election, which consists of:
 - 1. Planning and determining the schedule for the stages of the election;
 - 2. Planning for procurement of election logistics;
 - 3. Socialization of the implementation of elections;
 - 4. Implementation of other preparations in the implementation of elections in accordance with the provisions of laws and regulations;
- d) Supervise the implementation of the stages of Election Implementation, which consist of:
 - 1. Updating of voter data and determination of provisional voter lists and permanent voter lists;
 - 2. Structuring and determining the electoral district for the district/city DPRD;
 - 3. Determination of Election Contestants;
 - 4. Nomination until the determination of the Candidate Pair, candidate for DPR member, candidate for DPD member, and candidate for DPRD member in accordance with the provisions of the legislation;
 - 5. Implementation of campaigns and campaign funds;
 - 6. Procurement of election logistics and distribution;
 - 7. Implementation of voting and counting of election results at TPS;
 - 8. Movement of ballot papers, official report on vote counting, and certificate of vote counting results from TPS level to PPK;
 - 9. Recapitulation of the results of the vote count at PPK, Regency/Municipal KPU, Provincial KPU, and KPU;
 - 10. Implementation of counting and re-voting, follow-up elections, and follow-up elections; and
 - 11. Determination of election results.
- e) Preventing the practice of money politics;
- f) Supervise the neutrality of the state civil apparatus, the neutrality of members of the Indonesian National Armed Forces, and the neutrality of members of the Indonesian National Police;
- g) Supervise the implementation of decisions/decisions, which consist of:
 - 1. DKPP decision;
 - 2. Court decisions regarding election violators and disputes;
 - 3. Decisions/decisions of Bawaslu, Provincial Bawaslu, and Regency/Municipal Bawaslu;\
 - 4. Decisions of KPU, Provincial KPU, and Regency/Municipal KPU; and
 - 5. The decision of the competent authority on the violation of the neutrality of the state civil apparatus, the neutrality of the members of the Indonesian National Armed Forces, and the neutrality of the members of the Indonesian National Police;

- h) Submitting the alleged violation of the code of ethics of election organizers to DKPP;
- i) Submitting alleged election crimes to Gakkumdu;
- j) Manage, maintain, and care for the archives and carry out its depreciation based on the archive retention schedule in accordance with the provisions of the legislation;
- k) Evaluating election oversight;
- l) Supervise the implementation of KPU Regulations; and Carry out other duties in accordance with the provisions of the legislation.

Furthermore, Law Number 7 of 2017 further mentions the task of preventing election violations and preventing election process disputes as follows:

- a) In preventing election violations and preventing election process disputes, Bawaslu is tasked with:
 - 1. Identify and map potential vulnerabilities and electoral violations;
 - 2. Coordinate, supervise, guide, monitor, and evaluate the implementation of elections;
 - 3. Coordinate with relevant government agencies; and
 - 4. Increase public participation in election monitoring.
 - b) In taking action against election violations, Bawaslu is in charge of:
 - 1. Receive, examine and review allegations of election violations;
 - 2. Investigating alleged election violations;
 - 3. Determine allegations of election administration violations, alleged violations of the electoral code of ethics, and/or alleged election crimes; and
 - 4. Decide on election administration violations.
 - c) In taking action against electoral process disputes, Bawaslu is tasked with:
 - 1. Receive applications for dispute resolution of the election process;
 - 2. Formally and materially verify applications for dispute resolution in the election process;
 - 3. Conducting mediation between disputing parties;
 - 4. Conducting an adjudication process for electoral process disputes; and
 - 5. Decide on the dispute resolution of the election process.
- 2) Authority:
- a) Receive and follow up on reports relating to alleged violations of the implementation of laws and regulations governing elections;
 - b) Examine, review, and decide on election administration violations;
 - c) Examine, review, and decide on money politics violations;
 - d) Receive, examine, mediate or adjudicate, and decide on the dispute resolution of the election process;
 - e) Recommend to the relevant agencies regarding the results of supervision on the neutrality of the state civil apparatus, the neutrality of the members of the Indonesian National Armed Forces, and the neutrality of the members of the Indonesian National Police;
 - f) To temporarily take over the duties, authorities, and obligations of Provincial Bawaslu and Regency/Municipal Bawaslu in stages if the Provincial Bawaslu

and Regency/Municipal Bawaslu are temporarily absent due to sanctions or other consequences in accordance with the provisions of the legislation;

- g) Requesting information needed from related parties in the context of preventing and taking action against administrative violations, violations of the code of ethics, alleged election crimes, and electoral process disputes;
- h) Correcting the decisions and recommendations of the Provincial Bawaslu and Regency/Municipal Bawaslu if there are things that are contrary to the provisions of the legislation;
- i) Establishing Provincial Bawaslu, Regency/City Bawaslu, and LN Panwaslu;
- j) Appointing, fostering, and dismissing members of Provincial Bawaslu, Regency/City Bawaslu members, and LN Panwaslu members; and
- k) Carry out other authorities in accordance with the provisions of the legislation.

3) Obligations

- a) Be fair in carrying out their duties and authorities;
- b) To provide guidance and supervision to the implementation of the duties of election supervisors at all levels;
- c) Submit reports on the results of supervision to the President and DPR in accordance with the stages of the general election periodically and/or based on needs;
- d) Supervise the ongoing updating and maintenance of voter data carried out by the KPU by taking into account population data in accordance with the provisions of laws and regulations; and
- e) Carry out other obligations in accordance with the provisions of the legislation.

b) Law enforcement system and electoral justice

1. Election Law Enforcement

Election law enforcement has an important role in realizing democratic elections. In simple terms, election law enforcement can be interpreted as a process in an effort to enforce electoral law norms. Election law enforcement is aimed at improving order and legal certainty in society. According to Ramlan Surbakti, in the enforcement of election law there are three things that must be considered, first, law enforcement as a deterrent to violations or fraud that threaten election integrity, second, the mechanism to challenge the results and the handling of election violations, third, to provide a deterrent and preventive effect, must be given a strengthening of the impact of criminal provisions associated with election results. The legal framework in law enforcement for elections is regulated in Law Number 7 of 2017 concerning Elections, which contains the principles, principles and objectives of elections, namely, first, that elections are conducted on the basis of direct, general, free, confidential, honest and fair principles.

Second, that in holding elections, election administrators must carry out elections based on the principles of direct, general, free, confidential, honest and fair, and their implementation must meet the principles of independence, honesty, fairness, legal certainty, orderly, open, proportional, accountable, effective, and efficient. Third, that the regulation of election administration aims to strengthen a democratic constitutional system, realize elections that are fair and with integrity, ensure consistency in the regulation of the electoral system, provide legal certainty, and prevent duplication in election arrangements, as well as realize efficient and effective

elections. In addition, if you look at the legal framework regulated in Law 7 of 2017 it can be classified the types of election legal problems, namely, election violations (administration, code of ethics, and other legal violations), election process disputes with resolutions at Bawaslu and at the Administrative Court. State Administrative Court (PTUN), disputes over election results, and election crimes.

In carrying out the principles, principles and objectives of the election, Bawaslu is given the task of receiving, examining, and reviewing alleged election violations as well as investigating alleged election violations. Therefore, in the electoral law enforcement system, Bawaslu implements their duties are tied to the mechanism/procedure for handling election violations, namely, election violations stemming from findings of election violations (the results of election supervisory oversight) and reports of election violations.

2. Electoral Justice

Justice is a principle in the regulation of elections, which must exist and underlie the existence of concrete norms regarding elections. In summary, to recognize justice can be viewed from the character and purpose of justice itself. The inherent character of justice is equal rights, worthy of proportion. Impartial, morally reasonable and morally right, and lawful. While the goal of justice is, what will be achieved in legal relations, both between fellow citizens, as well as between citizens and the state or relations between countries. According to Ramlan Subakti, there are 7 (seven) criteria for realizing a fair election with integrity. First, the equality of citizens, both in voting and counting votes, as well as in the allocation of legislative seats and the formation of electoral districts; Second, legal certainty which is formulated based on the principle of democratic elections; Third, free and fair competition; fourth, the participation of all stakeholders in the entire series of electoral stages; Fifth, a professional, independent and impartial election management body; Sixth, collection integrity, tabulation calculation, and reporting of election votes; Seventh, fair and timely resolution of electoral disputes.

In a democratic rule of law, electoral justice plays an important role in ensuring the stability of the political system and compliance with the legal framework, and thus also contributes to the consolidation of democratic governance. The definition of electoral justice as stated by Jesus Orozco-Henriquez, that electoral justice includes the methods and mechanisms available in a particular country, to ensure that every action, procedure and decision related to the electoral process is in accordance with the legal framework, to protect or restore the right to vote, and to enable citizens who believe that their voting rights have been violated to file complaints, attend trials, and obtain decisions.

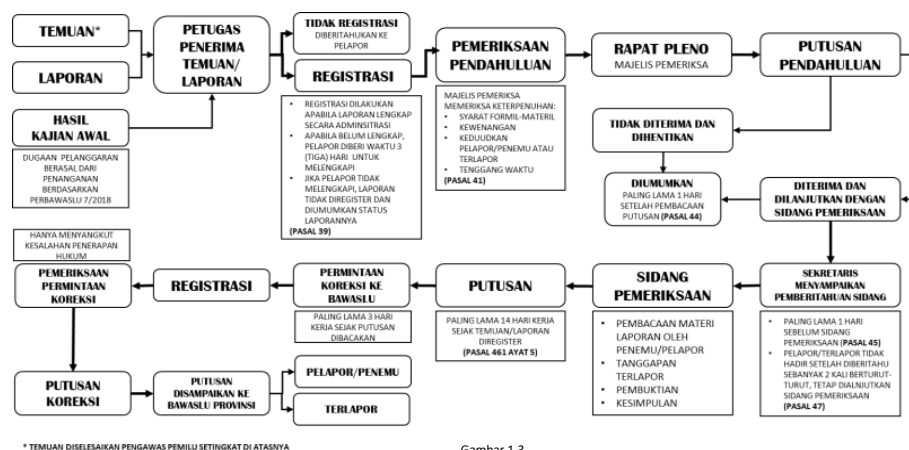
Based on this, the existence of the Bawaslu institution as an election law enforcer, with the authority given by law, is expected to be able to guarantee a sense of justice from all parties, participants, voters, and election organizers.

c) Handling Election Administrative Violations

Election administrative violations include violations of the procedures, procedures, or mechanisms related to the administration of elections in every stage of the election. Election administrative violations are divided into two, namely, ordinary election administrative violations, and election administrative violations that occur in a systematic and massive structure (TSM). Election administrative violations are

actions that violate the procedures, procedures, or mechanisms related to election administration in every stage of the election administration. Meanwhile, TSM election administrative violations are acts or actions that violate the procedures, procedures, or mechanisms related to election administration in each stage of the election administration, and/or pairs of candidates, candidates for members of DPR, DPD, Provincial DPRD, and Regency/City DPRD, promising and/or giving money or other materials to influence election organizers and/or voters in a structured, systematic and massive manner.

Based on the above understanding, the object of election administrative violations is in the form of acts and/or actions that violate the procedures, procedures, or mechanisms related to election administration in every stage of the election administration. Therefore, the subjects of election administrative violations are election participants consisting of political parties, pairs of candidates, candidates for members of the DPR, DPD, DPRD, campaign teams, and election organizers. The resolution of election administrative violations and TSM election administrative violations is carried out with the principle of speedy, impartial, and open manner. Furthermore, election supervisors are obliged to decide on the settlement of election administrative violations no later than 14 (fourteen) working days after the findings



Gambar 1.3

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and/or reports are registered. In exercising the authority to resolve electoral administrative violations, the election supervisor may establish an examining board to accept, examine, review, and decide on findings or reports of alleged electoral administrative violations. The formation of the examiner board is carried out through plenary meetings of Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu. The board of examiners consists of at least 3 (three) people from the chairman and/or members of Bawaslu, which is determined by a decree from the chairman of Bawaslu.

Based on the picture above, it can be explained that, election administrative violations come from findings or reports of election violations, the results of the supervision of election supervisors that there are allegations of electoral administrative and election administrative violations, based on the decision of the plenary meeting of election supervisors, the findings of alleged election administrative and election administrative violations TSM. The findings of the Regency/City Bawaslu are submitted to the Provincial Bawaslu, and the findings of the Provincial Bawaslu are

submitted to the Bawaslu, to be resolved through an open examination. Reports of alleged election administrative violations are submitted to Bawaslu, Provincial Bawaslu, and Regency/Municipal Bawaslu in writing in Indonesian and fulfill the formal and material requirements of the report. Reports of alleged TSM election administrative violations are submitted to Bawaslu, or Provincial Bawaslu in writing in Indonesian and fulfills the requirements for formal and material reports.

1. Open Session (Adjudication) Bawaslu

In resolving election administrative violations, there are two procedures, namely, the settlement of election administrative violations through an open trial (adjudication) conducted by the examining board, and the settlement of election administrative violations through a quick process. The two procedures are further regulated in Perbawaslu Number 8 of 2018 concerning the Settlement of Election Administrative Violations.

1) Settlement through open trial examination

In the process of handling election administrative violations, the examination process for the fulfillment of formal and material requirements, authority, position of the complainant and the reported party, and the time limit for findings or reports, is carried out through an adjudication session. In Perbawaslu Number 8 of 2018 it is stated that the panel of examiners conducts a preliminary examination, on the completeness and validity of the findings or reports of alleged violations of election administration and election administration of TSM.

The results of the preliminary examination of findings or reports of alleged election administrative violations are decided in a plenary meeting of the examining board, the decisions of the examining board consist of:

- a) Findings or reports of alleged electoral administrative violations or TSM election administrative violations are unacceptable and not followed up because they do not meet the requirements; or
- b) Findings or reports of alleged electoral administrative violations or election administrative violations of TSM are accepted and followed up with an examination hearing.

The trial for examining electoral administrative violations or TSM election administrative violations is carried out through the following stages:

- a. Reading of report material from the reporter or inventor;
- b. Reported response/answers;
- c. Proof;
- d. Conclusion of the reporting party or inventor, and the reported party; and
- e. Decision.

2) Settlement through inspection with fast events

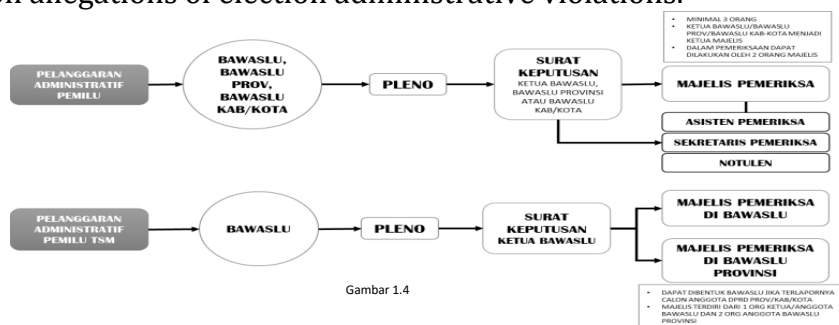
In Perbawaslu Number 8 of 2018 it is stated that the settlement of election administrative violations can be resolved through a quick examination. The settlement of the violation, can be resolved at the scene by considering feasibility and security. Findings or reports of alleged election administrative violations by means of a quick examination, related to the stages of the campaign and/or errors in the process of recapitulation of the results of counting the votes acquired by election participants. The findings or reports are attached with 2 (two) pieces of evidence, which are suspected

or reported in the findings or reports of election administrative violations, namely campaign implementers, campaign teams, and campaign participants.

If based on the election supervisor's decision is found guilty, it will be submitted to the KPU according to its level to get sanctions. If what is suspected or reported is the election organizer, namely the KPU according to its level, the results of the supervision and/or report are forwarded to the election supervisor one level above. Settlement of election administrative violations by means of a quick procedure, carried out no later than 2 (two) days, since the findings or reports are received. In the event of an alleged election administrative violation, the election supervisor may recommend to the KPU in stages according to its level, to temporarily suspend, activities in stages up to the issuance of a decision on the settlement of election administrative violations.

a) Decision

In resolving administrative violations, whether election administrative violations or election administrative violations of TSM, Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu, through the panel of examiners after examining a case, then decides on allegations of election administrative violations.



The decisions of Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu, in resolving the handling of election administrative violations, are divided into several categories, namely:

1) Decision Through Adjudication Examination

Based on Perbawaslu Number 8 of 2018 which is used as a guide in the adjudication process, regarding decisions, Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu, decide on election administrative violations by considering the evidence in the examination hearing. The decisions of Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu, are decided in a closed decision-making plenary meeting. Furthermore, the decisions of Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu, read out in a session that is open to the public.

The decisions made by Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu, based on article 55 of Perbawaslu Number 8 of 2018 are:

a. In the event that the decision of Bawaslu, Provincial Bawaslu or Regency/Municipal Bawaslu, states that the report on election administrative violations is proven, the verdict reads, "DECIDE", and:

1. To declare that the reported party has been legally and convincingly proven to have committed an election administrative violation;
2. To order KPU, Provincial KPU, or Regency/Municipal KPU to make administrative improvements to the procedures, procedures, or mechanisms in accordance with the provisions of laws and regulations;

3. Give a written warning to the reported party;
 4. Order the KPU, Provincial KPU, or Regency/Municipal KPU to not be included in certain stages in the implementation of the election; and/or
 5. Provide other administrative sanctions in accordance with the provisions of the legislation.
- b. The decision of Bawaslu, Provincial Bawaslu, or Regency/City Bawaslu, stating that the report is not proven, the verdict reads, "DECIDE", and states that the reported party is not legally and convincingly proven to have committed an act that violates the procedures, procedures, or mechanisms at the election stage in accordance with the provisions laws and regulations.

Furthermore, based on article 56 of Perbawaslu Number 8 of 2018, regarding the decision on administrative violations of the TSM election, it is:

- a) In the event that the Bawaslu decision states that the report on the alleged TSM election administrative violation is proven, the verdict reads, "DECIDED", as well as:
- 1) To declare that the reported party has been legally and convincingly proven to have committed an election administrative violation, in the form of promising and/or giving money or other materials, to influence the election organizers and/or voters in a structured, systematic and massive manner;
 - 2) Recommend to the KPU to cancel the reported party as a candidate for DPR/DPD member or a candidate pair;
 - 3) Recommend to KPU to instruct the Provincial KPU, to cancel the reported party as a candidate for member of the Provincial DPRD;
 - 4) Recommend to KPU to order Regency/Municipal KPU, cancel the reported party as a candidate for member of Regency/Municipal DPRD;

The Bawaslu decision stated that the report was not proven, the verdict read, "DECIDED", and stated that the reported candidate for DPR/DPD/Provincial DPRD/Regency/City DPRD/candidate pair, was not legally and convincingly proven, committed an act of promise, and/or gave money, or other materials, to influence election organizers and/or voters in a structured, systematic, and massive manner. Based on the results of the handling of election administrative violations in the West Java Province, there were 50 decisions resulting from the examination of an open trial, 42 cases were found to be administrative violations and 8 cases were rejected or not proven. Then, of the 42 cases that were declared administratively violating, and were given sanctions in the form of, 17 decisions with an order to order administrative improvements, 16 decisions with a written warning/reprimand, 7 decisions with an order ordering the KPU to write off candidates for legislative members, 2 decisions with a warning ordered to stop campaign activities.

b) Judgment Through Quick Event Check

In the process of completion through a quick inspection, the decisions made by Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu are made with a quick inspection form, based on article 60 of Perbawaslu Number 8 of 2018 are:

- 1) The decisions of Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu, or Panwaslu LN are read openly and can be attended by all parties;
- 2) A copy of the decision is delivered to the parties on the same day after the verdict has been read out;

- 3) Sub-district Panwaslu recommendations are submitted directly to the parties;
- 4) In the event that there is sufficient initial evidence of alleged violations committed by:
 - a) PPS, Village/Kelurahan Panwaslu submit reports to the Sub-district Panwaslu; and
 - b) Implementers, participants, election campaign teams, Village/Kelurahan Panwaslu submit reports to PPS.
 - c) The role of KPU in Bawaslu decisions

The KPU as an election organizer, in addition to having the authority to carry out all stages of organizing elections, from the planning process to the determination of candidates for members of the DPR, DPD, Provincial DPRD, and Regency/City DPRD, and candidate pairs, also has the obligation to implement Bawaslu decisions regarding administrative sanctions. election. In addition, based on General Election Commission (PKPU) Regulation Number 8 of 2019 concerning KPU Work Procedures, Provincial KPU, Regency/City KPU, states that, "KPU has the task of resolving administrative violations, codes of conduct, oaths/promises, and pacts. integrity". In resolving election administrative violations, the KPU through the legal and supervisory divisions, conducts a review of the recommendations and/or Bawaslu's decision regarding the results of handling election administrative violations. Furthermore, based on the results of the study, after going through a plenary meeting of KPU members, a KPU decision was made, as a follow-up to the Bawaslu decision.

Article 462 and Article 464 of the election law emphasize that the KPU and its staff must follow up on the Bawaslu decision, no later than 3 (three) working days from the date the decision is read out. In the event that the KPU and its staff do not follow up on the Bawaslu decision, then Bawaslu will file a complaint with the DKPP, as a violation of the election code of ethics.

D. Conclusion

The authority of Bawaslu over the system of law enforcement and election justice, gets special attention in the implementation of elections in Indonesia, namely by adding to the institutional authority regulated in the laws and regulations, this is as stated by F.J. Stahl, that one element of the rule of law is that the government is carried out based on regulations, as well as the existence of administrative justice in disputes. Furthermore, in the implementation of elections in Indonesia, Bawaslu as an independent institution that has the function of prevention, supervision, and prosecution, on election implementation and violations, as well as the settlement of administrative violations through adjudication, makes Bawaslu a semi-judicial election institution, in order to achieve law enforcement and justice. election. This is the basis that elections in Indonesia have carried out one of the principles of democratic elections, as RA Dahl stated, that the indicators of democratic elections, namely elections held there are special institutions to safeguard the rights of the people in law enforcement, namely the existence of an independent court that interpreting election rules.

The election law enforcement and justice system carried out by Bawaslu has a philosophical meaning to ensure honesty, from dominant power practices, abuse of

programs/activities, facilities and infrastructure, as well as office facilities for contestation, and contestants who are not ready to accept defeat. Furthermore, to uphold justice, from the actions taken by participants and election organizers, due to the different conditions of the candidates (between incumbents and non-incumbents, the amount of support, the amount of financial availability, and so on), the organizers' partiality or arbitrary actions, and abuse authority. The authority of Bawaslu in upholding election law and justice is to take legal action in the process of holding elections if it is not in accordance with the electoral laws and regulations. Such legal action can be constructive, namely law enforcement that allows to change and/or cancel decisions, and can be punitive, namely allowing sanctions to be imposed on perpetrators of violations. This is done in order to protect and restore the people's voting rights, namely the right to vote and the right to be elected, and to guarantee democratic elections.

Legal certainty in handling election administrative violations through adjudication, carried out based on Law Number 7 of 2017 concerning General Elections and guided by General Election Supervisory Agency Regulation Number 8 of 2018 concerning Settlement of Election Administrative Violations, the impact of decisions issued by Bawaslu on the electoral process. Depending on the decision issued, the decision can be in the form of administrative improvements to the procedures, procedures or mechanisms in accordance with the provisions of laws and regulations, written warnings, not being included at certain stages in the administration of elections, cancellation as a candidate, and sanctions. Other administrative in accordance with the provisions of the legislation. The KPU in following up on Bawaslu decisions is regulated in the election law, that every Bawaslu decision must be followed up by the KPU in the form of issuing a decision, within a maximum period of 3 (three) working days after the decision is read out. With such an arrangement, it is certain that the Bawaslu decision, in resolving election administrative violations, is not merely a vacuum, but must be followed up by the KPU. This means that every Bawaslu decision, after being read out, has an executive nature.

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